O/Rents/53

1953. **File No.** 33/53

K

p 21/E Legal Deptt

G BRANCH

Subject:–

Opinions on the Bombay

Rents, Hotel and Lodging

House Rates Control Act 1947

O/Rents/5-

File No. 33/53

Gen. 194 e.

C O N T E N T S.

Legal Department File No. O. Rents / 53 (G.)

Sr.No.	R.I./G.No.	Subject	Pages.
		Opinions under the B'bay Rents, Hotel and Lodging House Rates (Control) Act, 1947.	
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9	O.No.G-498/19-8-53.	Whether the tenancy rights can be transferred to Raghadu Gharuv by virtue of his purchase of the premises although the rent receipt x still stands in the name of previous tenant.	37-38
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R.D.P.
22/2/54.
S.C.

Office of the R.L.A.

The question for consideration is whether under proviso to section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Government can permit transfer of interest by Government in premises rented by Government for being used as Government Grain Shops to displaced persons.

Attention of the Public Works Department is requested to R.L.A.'s opinion No. 19947, dated the 13th December 1951 (copy attached) in which R.L.A. has advised that the proviso to section 15 is not confined to a class of leases but can apply to a single lease also and all that is necessary is that exemption in case of an individual should not be granted in an arbitrary or unreasonable manner and that reasons for granting such exemption should be stated in the notification to be issued under the proviso to section 15. In this case as the premises are let to Government, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 would appl (vide section 4(1)) and it would be legal for the State Government to permit transfer of interest in the premises of Government Grain Shops to displaced persons by issuing a notification under the proviso to section 15.

Sd/- P.M.LAD.
18/2/53.

Remembrancer of Legal Affairs.

U.R. to C. of R., No. G-113, dated the 18th February 1953.

SM/22.8.

Office of the R.L.A.

The view taken by Messrs, Little & Co. in their letter dated 3-1-1953 is not consistent with the one taken by them in their letter dated 11-5-1949. There seems no objection to accept compensation for use and occupation 'without prejudice' as opined in R.L.A's No.G-320, dated 30-4-1949. However, as the matter is in the hands of Messrs.Little & Co., their instructions that compensation should not be accepted from Messrs. A.H.Ghiwandiwalla may be followed.

Government may continue paying rent to the Municipality as advised by Messrs, Little & Co.

Sd/- P.M.IAD.
7/2.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 86, dated the 7th February 1953.

SNT/22.8.

Office of the R.L.A.

The R.L.A. is requested to advice whether the rent paid to the landlord in this case upto the end of April 1949 should be recovered from out of the amount of Rs. 1,476/- now claimed by the landlord or whether the amount of Rs. 1,476/- should be paid as demanded as it would be possible to put a counter claim either before or after the court decides the case for damages which would be equal to the rent for 11 months from June 1948 to April 1949 amounting to Rs. 676-8-0 suffered q by Government due to landlord's failure to effect the repairs in time.

It was advised by the R.L.A. in his opinion No. 10072, dated the 18th July 1950 that Government would be entitled to recover rent paid to the landlord after the premises were vacated as that payment was made under a misapprehension of law. In the suit filed by the landlord in the Small Causes Court, he has claimed Rs. 1,230/- representing the arrears of rent for the period from 1st May 1949 to 31st December 1950. In that suit a counter claim ought to have been made for the rent paid upto April 1949 by misapprehension. Not only that this was not done but it is stated in the written statement that this payment was made ex-gratia on the assumption that the plaintiff would carry out the repairs within time. In view of this statement, it would not be now proper to deduct that amount from the rent which is now payable for the period from 1stJanuary 1951 to 31st December 1952.

Sd/- P.M.LAD.
18/3

Remembrancer of Legal Affairs.

U.O. to A.C. of R.(G.G.S.), No. G- 170, dated the 18th March 1953.

SMT/22.8.

No. 2341/53-C.

Office of the Food Controller
New India Assurance Building,
5th Floor, Fort, Bombay,

Dated the April 1953.

To

The Manager,
Bombay Port Trust Docks,
Bombay.

Subject:- Bombay Port Trust Godowns let to Government standard rents of -
Payments for outstanding bills of -

Sir,

In connection with the outstanding rent bills preferred by Bombay Port Trust in respect of the 23 godowns (as per attached List) rented by Government from the Bombay Port Trust, I am directed to state that in view of section 7 of the Bombay Rent Hotel and Lodging Houses Rates Control Act, 1947 the Bombay Port Trust is not legally entitled to claim rents in excess of standard rents and the permitted increases. I am, therefore, to request you kindly to furnish Government with a statement giving full particulars of the amount of standard rent and of the permitted increases (under the Bombay Rents Hotels and Lodging Houses Rates (Control) Act, 1947) in respect of each of the 23 godowns. You are also requested to prefer bills for the outstanding dues and the future dues on account of rent in respect of each godown, in accordance with the standard rent and the permitted increases thereof so as to enable Government to pay off the same as soon as possible. Please note that the amounts paid to the Bombay Port Trust in excess of the amounts of standard rents and the permitted increases in respect of any of these godowns are recoverable from the Trust by deducting from the amounts of the outstanding arrears of rent and of the future dues legally payable to the Trust.

2. Standard rent and the permitted increases for the M Platform may also be communicated as requested in my letter No.2341/530, dated the 29th January 1953 addressed to the Manager Bombay Port Trust Railway. (Copy enclosed).

By order and in the name of the Governor of Bombay,
Per Food Controller, Bombay.

SHT/22.8.

Office of the R.L.A.

A revised draft letter is appended.

Sd/- J.R.Dhurandhar.
27/4.

Remembrancer of Legal Affairs.

U.R. to F.C., No.C-243 , dated the 27th April 1953.

SRT/22.C.

L.D.R.I.No. G-418, dt.24-4-53.

Submitted.

2. Please see the office note of the C.S.D. on page 23 ante.

3. The facts of this case, in short, are as follows :-

One, Shri Hassan Raza Kudratulla requested the C.S.D. by his letter dated 2-3-1953 to grant him a charcoal retailer's licence. The C.S.D. asked Shri H.R.Kudratulla to produce rent receipts of the shop premises and municipal licence. He has produced a municipal licence and a sub-tenancy receipt issued in his name in respect of the shop premises situated at 12½ Arab lane. The C.S.D. has referre these papers to this office for R.L.A.'s advice whethe a person can be accepted as a tenant if he produces a sub-tenancy receipt issued by the tenant in his name and the rent receipt issued by the landlord in the name of the tenant.

Sd/-
22/5/53

B.S.

Sd/- R.T.Katarki.
23/5.

R.L.A. Sd/- J.R.Dhuramdhar,
23/5.

SNT/22.8.
SNT/22.8.

Office of the R.L.A.

From the rent receipt issued by the landlord in favour of Mistry Dawood Tajmahomed it is seen that the premises let are a 'horse victoria repair shed in the compound of the bunglow.' The said Dawood Tajmahomed has presumbly sub-let a part of the shed to the applicant. The premises as described appear to be business premises to which Part II of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, would apply. Section 15 occuring in that part prohibits subletting the whole or part of the premises by a tenant. The proviso to that section empowers the State Government by notification in the Gazette to permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification. The notification issued by the State Government (G.N., H. & L.G.D. No. 5975/33, dated 12-5-1948 printed at p. 1355 of L.R. & O. Vol. I) does not cover transfers as in the present case. In the receipt issued by Mistry Dawood Tajmahomed the applicant has also described as a sub-tenant. The sub-tenancy cannot therefore be deemed to be lawful.

Sd/- J.R.Dhurandhar.
2

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G - 307 , dated the 26th May 1953.

SMT/23,8.

Legal Department.

The question for R. L. A's consideration is whether the proposal of the Civil Supplies Department to reject the claim of the Manager of Zarolwadi in respect of payment of the difference in rent between Rs. 180/ and Rs. 114/- per month from 27th Octoner 1944 to 31st May 1950 is legally in order.

The premises were requisitioned and taken possession of by Government on 27th October 1944. Both the allotment order and the requisitioning order are not available. It is not even clear as to whether the premises were derequisitioned at any time. However a lease deed was executed by the owner on 14th October 1946 which shows that the manager of the Wadi accepted Government as tenant.

The wahiwatdar of the place has accepted rent at the rate of Rs. 114/- per month from 27th October 1944 right up to June 1950. Then he applied for enhancement of the rate of rent. The Executive Engineer then recommended the enhanced rate of Rs. 180/- per month. This enhanced rate cannot be given retrospective effect as from 27th October 1944 as suggested by the Wahiwatdar. His claim for giving retrospective effect to the new rate is clearly untenable and may be rejected.

Sd/-

Additional Secretary to Government.

U.R. to C.S.D., No. G- 393 , dated the 8th July 1953.

SNT/23.8.

L.D.R.I.No. G-386, dt. 17-4-53.

Submitted.

2. Please see the C.S.D. office note dated 9-4-53. One Shri C. M. Mirikar of Taklibhan was given a loan of Rs. 5,000/- by Govt. for construction of a godown. The godown was let to Govt. from 1-9-50 at a monthly rent fixed by Executive Engineer at Rs. 150/- Subsequently the Executive Engineer fixed rent at Rs. 88/- and Shri Mirikar was informed of it in about month of May 1951. Retrospective effect was given to this decision by making adjustments against future rent payable to owner. The owner has through his advocate served notice dated 19-3-53 to Govt. under section 80 of C.P.C. stating that the payment of rentof Rs. 150/- per month should be continued and accordingly credited towards the paymentof his loan to Govt. failing which a suit would be fi led praying for the orders that -

(i) The monthly rent of Rs. 150/- fixed according to original agreement is binding on Govt.

(ii) that the Collector has no power to change rent to Rs. 88/- per month and that the change is illegal.

(iii) that the rent of Rs. 150/- should be credited towards the loan account.

The C.S.D. has referred these papers to the R.L. A. for opinion whether the suit if filed would be defensible.

SM /23.8.

Legal Department.

The suit would be defensible as it can be argued before the court that the standard rent is Rs. 88/- p.m. and the rent of Rs. 150/- was fixed under a mistaken calculation and therefore retrospective effect was given to the rent fixed after rectifying the mistake. Rs. 88/- should therefore be taken as the rent at which the premises were first let (see section 5(10) (b) (iii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Even if the court does not accept the above argument, the court may fix standard rent under section 11.

Sd/-

Secretary to Government.

U.R. to C.S.D., No. G-453, dated 1st August 1953.

SNT/23.8.

R.L.A. has directed that a Copy of the L.A. Bill No.LIX of 1953 to amend the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 is forwarded to the C.S.D. and their attention is invited to the provision made in cl. 4 of the Bill for insertion of sec. 4 in the Act.

Sd/-

Secy. Sd/-

SNT/23.8.

Legal Department.

A copy of the L.A. Bill No. LIX of 1953 to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is forwarded to the Civil Supplies Department and their attention is invited to the provision made in clause 4 of the Bill for insertion of section 4A in the Act.

Sd/-

Secretary to Government.

U.R. to C.S.D. No. G-500, dated the 20th August 1953.

Dna/23.8.

Legal Department.

By Government Notification, Health and Local Government Department, No. 5975/33, dated the 12th May 1958 as amended from time to time, issued under the proviso to section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Government has permitted transfer or assignment indidental to the sale of business as going concern together with the stock-in-trade and the goodwill thereof provided that the transfer or assignment is of the entire interest together with the business; the stock-in-trade and goodwill thereof. As the transfer of the premises of the shop by Shri S. S. Upadhya to Shri Maghadu is incidental to the sale of Shri Upadhya's entire kerosene business as a going concern together with goodwill, the transfer is legal and there is no objection to recognise Shri Maghadu Gharavkas the tenant of the said premises even though the rent receipt may still be in the name of the old tenant. Under the sale deed the vendor has agreed to address the landlord for the transfer of the tenancy in the name of the vendee. Attention of the Civil Supplies Department is invited to F.L.A.'s opinion No. G-715, dated the 26th December 1952.

Sd/-

Secretary to Government

U.R. to C.S.D., No. G-498, dated the 19th August 1953.

SNT/23.8.

Legal Department.

The view taken by the Civil Supplies Department is correct. Shri Somawalla is not entitled to the difference in the rate of rent for the period from 1st May 1944 to 30th June 1948. His claim for Rs. 1,250/- in that respect may be rejected.

Rs. 25/- p.m. seems to be the standard rent of the premises but looking to the circumstances of the case there is no objection to pay from 1st July 1948 Rs. 50/- p.m. as per the rent fixed by the Executive Engineer.

Sd/-

Secretary to Government.

U.O. to C.S.D., No. G-566, dated the 17th September 1953.

MMT/23.8.

Legal Department.

Rent paid in excess from November 1949 to June 1950 cannot be recovered by deduction from future rent after the lapse of six months.

The rent fixed by the Executive Engineer at Rs. 26/- per month for the period from March 1952 onward may be accepted by the Court as Standard Rent. But strictly according to Law the Standard Rent will have to be determined under section 5(10)(b) of the Bombay Rents, Hotel and Lodging House Rates (control) Act, 1947.

Sd/-

Secretary to Government.

U.R. to S.T.C., No. G-537, dated the 5th September 1953.

SHT/23.8.

Office of the R.L.A.

Under section 15 of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 read with the Government Notification No. 5975/33 dated the 24th September 1948 the transfer of the entire interest of the transferor by the sale of his business as a going concern is permissible and the transferee becomes the lawful tenant. This question however so far as it concerns these two cases has become only of academic interest as the Bombay Charcoal and Firewood Trade Licensing Order so far as it applied to Greater Bombay has ceased to be in force in that area from the 1st November 1953 and there is therefore now no question of granting any licence to the parties.

Sd/- P.M.LADD
17/11.

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 707 , Dated the 18th November 1953.

SNT/23.8.

Office of the R.L.A.

In his opinion No. G-614, dated 13- 11- 52, R.L.A. had advised the C.S.D. that sub-letting by Government of the premises let to them would be illegal under section 15 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947. The P.W.D. has informed the C.S.D. that it would be legal for the State Government to permit transfer of premises of G.Gs. to D.Ps. by issuing notices under the proviso to section 15. In view of the above opinion of the R.L.A. C.S.D. has forwarded the papers to this Department for advice before approching the P.W.D. for taking action as suggested by them.

The view taken in the R.L.A's opinion that sub-lettijg of premises is illegal under section 15 of the Bombay Rents Hotel and Lodging House Rates Control Act is correct. However, as stated in R.L.A's opinions Nos. 19947, dated the 13th December 1951, and G.113, dated the 18th February 1953, Government can by a notification issued under the proviso to section 15 permit the transfer of interest in the premises of the G.Gs, to displaced persons . There is, therefore, no objection to follow the course suggested by the P.W.D., provided the Administrative Department is agreeable to a notification of this kind.

Sd/- P.M.LAD.
18/11.

Remembrancer of Legal Affairs.

U.R. to C.S.D.,

No. 1549/GSConfl., dated the 19th Novr. 1953.

Office of the R.I.A.

The District Agricultural Officer, Baroda rented 14 godowns for the storage of manures and seeds. The Executive Engineer, Baroda fixed the rents of these godowns below those agreed to by the District Agricultural Officer. The Executive Engineer, Baroda Division who was asked to reconsider the matter replied that no increase in the rents already certified could be proposed. By Government Letter No. 1106/19721/G, dated 14th June 1952 sanction was accorded to the hiring of 14 godowns by the District Agricultural Officer, Baroda on monthly rents mentioned in column 8 of the statement at slip Q (A & F.D. File No. 1105-XVI of 1952, p.261). The District Agricultural Officer, Baroda has stated in his letter dated 11th June 1953 to the Director of Agriculture, Poona that rates of rent fixed by Government in the letter referred to above are comparatively lower than the rents already proposed and paid by him to the owner in view of the dearth of godowns in Baroda District. His efforts to effect recoveries from the owners have failed and instead the owners have asked the Agricultural Department to vacate the premises. It seems that nobody is willing to let out their premises to Government for they are under the impression that Government fix them more than the prevailing rent hence he is unable to shift from the present godowns. He has therefore requested Government to exempt the owners shown in the statement at page 5/Cs. from the recovery of excess rent paid to them and to sanction the rents of those godowns at the rate agreed to by him.

The question for consideration of the Remembrancer of Legal Affairs is whether there is any legal remedy by which the Government can force the owners to accept the

accept the rents fixed by Government and to refund the excess paid.

By virtue of clauses 3 and 4 read with clause 1(ii) and (iii) of the Baroda State (Application of Laws) Order, 1949 (which was issued in exercise of powers under section 4 of the Extra Provincial Jurisdiction Act, 1947 and which came into force in Baroda State on 30th July 1949 the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 was made applicable to the whole of Baroda State. Under clause 4 of the States Merger (Governor's Provinces) Order, 1949 all the laws in force in a merged State or in any part thereof immediately before the appointed day (i.e. 1-8-49) including orders made under section 3 or section 4 of the Extra Provincial Jurisdiction Act, 1947 were continued in force until repealed, modified or amended by a competent Legislature or other competent Authority. 'Baroda' was included in the Schedule II to the Order as one of the merged States (Please see also clause 2(e) of the said Order). Further, by section 3 read with the First Schedule of the Bombay Merged States (Laws) Ordinance 1949 the provisions of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 were extended to and brought into force in the Merged States (which expression included Baroda State - see section 2 of the Ordinance). Similar provision was made by section 3(1) read with the First Schedule of the Bombay Merged States (Laws) Act, 1950. It is thus clear that the Rent Act is applicable to Baroda since 30th July 1949.

It will be seen from statement at slip Q that the first two godowns were in Government possession from 28th August 1949 to 11th June 1950 and from 1st October 1949 to 10th May 1950. The third godown appears to have been rented from 25th May 1950 and the fourth from 11th January 1950. Both these godowns appear to be still in

still in the possession of the District Agricultural Officer, Baroda. The standard rents of the premises in question are not known. As the Rent Act is applicable to Baroda, the landlord are not bound to accept the rents fixed by the Executive Engineer, Baroda, or by the Government The proper course would have been for Government to get the rents fixed by Court under section 11 of the Rent Act, 1947 (see R.L.A's No. 12162, dated 25-8-50). The rents paid in excess cannot now be recovered after lapse of six months in view of section 20 of the Rent Act (see U.O. No. G-537, dated 5-9-53). In the case of the two godowns which are still in Government 's possession if the landlords are not prepared to accept the rents fixed by the Government they can resort to the provisions of the Rent Act, 1947 and get the standard rents fixed by Court, if they so desire; but until such time the District Agricultural Officer can continue to offer rent at the rates fixed by Government which have been fixed after taking into consideration the rents of premises in the same locality.

Sd/- P.M.LAD,
14/12.

Remembrancer of Legal Affairs.

U.O. to A. & F.D., No. G-769, dated the 15th December 1953.

SNT/23.8.